

EXHIBIT "I"

Page 1

1 IN THE CIRCUIT COURT OF

2 THE CITY OF ST. LOUIS

3 STATE OF MISSOURI

4  
5 COLIN FAHY,

6 Plaintiff,

7 vs.

Case No. 0922-CC10076-01

8 TASER INTERNATIONAL, INC., AND ED ROEHR AUTO RADIO CO.,

9 D/B/A/ ED ROEHR SAFETY PRODUCTS CO.,

10 Defendants.

11 - - - - -

12 VIDEOTAPED DEPOSITION OF

13 PATRICK TCHOU, M.D.

14  
15 Taken on Wednesday, July 18, 2012, at 8:40 a.m.

16 At the offices of Cleveland Clinic Foundation, 9500

17 Euclid Avenue, Building J, Cleveland, Ohio, before

18 Janice M. Rogers, a Registered Professional Reporter

19 and Notary Public in and for the State of Ohio.

20  
21 PROFESSIONAL COURT REPORTING & VIDEO

22 Certified Court Reporters and Videographers

23 235 East Broad Street

24 Westfield, New Jersey 07090

25 908.228.5261

1 THE VIDEOGRAPHER: This is the  
2 deposition of Dr. Tschou, Patrick Tschou, M.D.,  
3 cause number 0922-CC10076-01 in the cause Colin  
4 Fahy versus Taser International.

5 We're on the record. Will the court  
6 reporter please swear in the witness.

7 PATRICK TCHOU, of lawful age, called for  
8 examination, being by me first duly sworn, as  
9 hereinafter certified, deposed and said as  
10 follows:

11 EXAMINATION OF PATRICK TCHOU

12 BY-MR.BURTON:

13 Q. Good morning, Dr. Tschou. Thank you  
14 for taking time out of your busy schedule to meet  
15 with us today.

16 My name is John Burton. I am an  
17 attorney for a gentleman named Colin Fahy. He is  
18 not a patient of yours. As far as I know you  
19 know absolutely nothing about his case.

20 Just in thumbnail form, he was  
21 shocked with a taser X26. He did subsequent to  
22 that -- and there's a dispute what subsequent  
23 means that you don't need to worry about -- go  
24 into cardiac arrest. He was revived.

25 And he has filed a lawsuit against

0005

1 Taser. You've never seen this patient as far as  
2 I know. You have never heard about this case  
3 otherwise.

4 I'm not going to be asking you any  
5 specifics about this case. You're not designated  
6 as an expert witness in this matter. Although I  
7 believe your former resident, Dr. Lakkireddy, is  
8 an expert witness for Taser International.

9 What I wanted to ask you about,  
10 because it's come up in a number of these cases,  
11 is the research that you personally did for Taser  
12 International, which I understood took place  
13 2005, 2006 and resulted in at least two published  
14 papers. The first one I would call the effects  
15 of cocaine intoxication. And the second one I  
16 would call barb location, if that's okay with  
17 you.

18 And you've had your deposition taken  
19 before?

20 A. Yes.

21 Q. Okay. So just make sure you answer  
22 yes or no and not shake or nod your head,  
23 although the last ones obviously didn't matter.

24 And have you ever had your  
25 deposition taken before in a taser related case?

1 A. No.

2 Q. Okay. I'm just going to cut right  
3 to the chase. We have your biography from your  
4 website. We know who you are.

5 Could you tell us how you first came  
6 in contact with Taser International?

7 A. I was approached by them to consider  
8 doing a study. And that's how I was first in  
9 contact with them.

10 Q. Prior to when you were first  
11 approached by Taser International, had you had  
12 any personal scientific or medical experience  
13 with what we could call electronic control  
14 devices or ECDs?

15 A. None.

16 Q. And who approached you?

17 A. I believe it was Mark Kroll.

18 Q. I notice that you are co-author with  
19 Dr. Kroll on at least one article I saw.

20 Was it around the same time that you  
21 were working on an article with him?

22 A. I don't know the exact time  
23 relationship. I have worked on and off with Mark  
24 Kroll probably for 20 years.

25 Q. And can you give us your best

1 estimate of when Dr. Kroll approached you to do a  
2 research project for Taser International?

3 A. I would say it would have been  
4 approximately two years before the first  
5 publication.

6 Q. So would late 2004, early 2005?

7 A. Something like that. I can't be  
8 certain about it. But based on, you know, the  
9 delays of getting a study done, getting  
10 everything approved first and then publication  
11 reviews and so on, I would estimate it was  
12 probably about two years before.

13 Q. What exactly did he outline in terms  
14 of the project that Taser was interested in?

15 A. There had been several studies in  
16 the literature at that point. And they wanted --  
17 they wanted to do additional studies to, you  
18 know, have reproducibility basically of data that  
19 had been previously published.

20 And, you know, approached us to do a  
21 study. They didn't outline any specifics about a  
22 study. But they asked us to consider doing  
23 another study.

24 Q. Was the study that they asked you to  
25 do specifically related to the effect of cocaine

1 involved in the animal labs that may have been  
2 also involved in, you know, the details of how  
3 that should be done.

4 Q. And when I spoke to Dr. Lakkireddy  
5 about this, he characterized you as his mentor at  
6 the time. Do you agree with that?

7 A. Yes. He was a cardiac  
8 electrophysiology fellow here in training at the  
9 time. And I was a staff member here.

10 Q. So you looked at the pace study that  
11 had been done by Dr. Stratbucker and  
12 Dr. McDaniel, for example?

13 A. Those names sound familiar. I would  
14 probably have looked at it, although I don't  
15 recall exactly now what we looked at prior to  
16 putting together the proposal.

17 Q. Excuse me. I forgot my phone.

18 And then what was the next step  
19 after you prepared your proposal?

20 A. The next step was the -- Taser  
21 approved their funding for the proposal. And so  
22 then we proceeded to do the experiments.

23 Q. Now, you -- is it correct that you  
24 authored your -- you are the author, co-author on  
25 two peer reviewed publications arising from these

1 experiments?

2 A. I think there were a total of three  
3 that arose from those experiments.

4 Q. And what was the third, if there's  
5 effect of cocaine intoxication and barb position?

6 A. The third one was looking at whether  
7 there was any deleterious effect on pacemakers  
8 and implantable defibrillators from the taser  
9 shocks.

10 Q. Now, at one point, did you -- at one  
11 point you actually went into the laboratory with  
12 pigs, correct?

13 A. Correct.

14 Q. Prior to that point did you meet  
15 with any taser representative, other than  
16 Dr. Kroll?

17 A. I don't recall meeting with anybody  
18 else. In fact, I don't even recall face to face  
19 meetings with Dr. Kroll, other than our  
20 communication via e-mail and, you know, sending  
21 the proposals, a design of our experiments and so  
22 on back and forth.

23 Q. When you actually experimented on  
24 the pigs --

25 A. Correct.

1 there were longer darts being shot at people?

2 A. I'm not aware not even now that  
3 there is a longer dart, so I don't think I was  
4 aware of it at that time.

5 Q. Okay. Do you recall meeting with  
6 any executive, like Rick Smith, for example, the  
7 CEO with Taser International, before you actually  
8 sat down and did the experiments?

9 A. No, we did not meet with him.

10 Q. As far as you can recall today, is  
11 the only person that you actually recall talking  
12 to at Taser Mark Kroll?

13 A. Yes, that's correct.

14 Q. Now, did you tell Dr. Kroll that you  
15 had a device that you were going to be able to  
16 insert into the pig that would measure as to  
17 whether the device was causing cardiac capture?

18 A. That was part of our proposal, was  
19 that we were going to do that, correct.

20 Q. Okay. And what do you call that  
21 device?

22 A. That we inserted into the pig?

23 Q. Yes.

24 A. It was a standard cardiac pacing and  
25 recording catheter.

1 Q. Can we call it a cardiac catheter,  
2 is that okay?

3 A. Well, electrode catheter probably  
4 would be a more accurate description.

5 Q. A cardiac electrode catheter?

6 A. Yes.

7 Q. And to your knowledge at that time,  
8 was yours the first experiment to use a cardiac  
9 electrode catheter in a pig experiment with an  
10 electrical control device?

11 A. Yes, I think that was the -- that  
12 was my -- that's my recollection right now, that  
13 when we reviewed the literature, we thought we  
14 can improve on the, you know, defining the  
15 various outcomes and so on by inserting a  
16 catheter to record electrical activity from  
17 inside the heart.

18 Q. Okay. So I'd like to go through  
19 these experiments and obviously as quickly as  
20 possible to kind of fill in some details.

21 So I understand there were 13 pigs.  
22 And you have the size ranges in there. They're  
23 relatively small pigs, around 70, 80 pounds,  
24 somewhere in there. You had certain dart  
25 positions that you tested. The pigs were all



1 A. Yes.

2 Q. So bracketing the heart at a very  
3 close proximity to the myocardium had the lowest  
4 safety margin, where the ones in the back had the  
5 highest, correct?

6 A. That's correct.

7 Q. Okay. So based on this, if you were  
8 talking to some police officer that was shooting  
9 human beings with tasers, you would tell them,  
10 based on our research, in terms of the risk of  
11 inducing cardiac capture and ventricular  
12 fibrillation, it's going to be safer to shoot  
13 them in the back than shoot them in the front?

14 MR. MALEY: Object to form.

15 A. I would think that that would be  
16 pretty obvious from our experimental data that  
17 that would be the case.

18 Q. And you also made a finding that  
19 induction of VF was associated with barb  
20 proximity to the heart, correct?

21 A. Yes.

22 Q. And that the capture rate was  
23 closely associated with barb proximity to the  
24 heart, correct?

25 A. Yes, that's correct.

1 Q. Okay. From the very beginning, as  
2 we obtained our data from our animal study, I had  
3 advised Taser that the possibility of inducing  
4 ventricular arrhythmias is there and at the  
5 minimum we cannot categorically say this is not  
6 possible. Do you see that?

7 A. Uh-huh.

8 Q. Okay. What I'm concerned about is,  
9 I had advised Taser that the possibility of  
10 inducing ventricular arrhythmias is there. From  
11 the beginning, as we obtained our data from our  
12 animal study, I had advised Taser that the  
13 possibility of inducing ventricular arrhythmia is  
14 there.

15 What were you referring to?

16 A. When we gathered all our data for --  
17 from the experiments, we presented that data to  
18 Taser.

19 Q. That was in advance of when you  
20 prepared your abstracts and everything?

21 A. That was in advance of -- that was  
22 immediately after we've collated all the data and  
23 analyzed it. And we presented that data to Taser  
24 at that time, yes.

25 Q. Okay. And so would that have been

1   sometime in 2005?

2           A.     It would be sometime after we  
3   finished the experiments and before present --  
4   before presentation at the meetings or  
5   publications. But I don't know exactly the  
6   timing right now.

7           MR. BURTON: Dr. Tchou or,  
8   Ms. DiFranco, maybe I could ask you this. Is  
9   there like a record you could look at that would  
10   be like -- like the log of the laboratory or  
11   something, and you could say, oh, we did the pig  
12   experiments from June 1st to July 27th, you know,  
13   2005 or whenever?

14           MS. DiFRANCO: You could put a  
15   request in. And we can look. I don't know if  
16   one -- such information, how to extrapolate that.

17           MR. BURTON: Okay. Well, I'll write  
18   you a letter.

19           Q.     I think it was around sometime mid  
20   2005, as I put all the dates together. Does that  
21   sound right?

22           A.     Approximately that's correct. It  
23   could be plus or minus a year or something like  
24   that.

25           Q.     Because the paper was issued in May



1 of 2006. And that was Dr. Lakkireddy's estimate.

2 A. Yes. That could be close enough.

3 Q. Okay.

4 MR. BURTON: It would be interesting  
5 just to get those exact dates, so we wouldn't  
6 have this. So I'll write you a letter.

7 MS. DiFRANCO: Thank you.

8 MR. BURTON: I mean, I imagine  
9 there's a log or something --

10 MS. DiFRANCO: I don't know.

11 MR. BURTON: -- in a lab so we don't  
12 have to guess. And I understand how years run  
13 together.

14 Q. So you completed your study. You  
15 compiled your data. Let's just say the last day  
16 of -- that you're actually in the lab, okay, now  
17 we're through with the pigs. We're going to sit  
18 down and we're going to prepare our data, analyze  
19 it and prepare our articles.

20 It was after that that you first  
21 told Taser about your results?

22 A. Yeah, it was after we finished all  
23 the experiments where we put together the data  
24 that we actually made a presentation to them.

25 Q. And who was there?

1           A.     I don't recall exactly who was  
2 there. But I would -- they were certainly people  
3 in, you know, the administrative branch. There  
4 was probably three or four people there.

5           Q.     Do you know if Rick Smith, the CEO,  
6 was there?

7           A.     I don't recall exactly who was  
8 there, so I can't say that whether he was there  
9 or not.

10          Q.     Can you say whether Mark Kroll was  
11 there?

12          A.     I can't be sure actually.

13          Q.     Now, are we talking about --

14          A.     It's quite a few years back.

15          Q.     Let's say, do you know -- let's say  
16 the last day, okay, is X. Let's say it was  
17 August 1st. That was the day you wrapped in the  
18 lab, just hypothetically.

19          A.     Uh-huh, yes.

20          Q.     How long after that last day when  
21 you wrapped in the lab do you think this meeting  
22 was? Are we talking about a week, a month, a  
23 couple months?

24          A.     I would say it would probably be  
25 more in the range of two to four months time



1 frame.

2 Q. And then maybe it was six months or  
3 so after that that you presented the abstract,  
4 just using very general kind of numbers?

5 A. That could be a good estimate.

6 Q. Okay. Can you just -- was it you  
7 and Dr. Lakkireddy who made the presentation?

8 A. Yes, that's correct.

9 Q. Okay.

10 A. I believe we were both there.

11 Q. And who was doing the talking or who  
12 did it?

13 A. Dr. Lakkireddy basically presented  
14 the data.

15 Q. And what was the upshot of what you  
16 told Taser at this meeting?

17 A. I don't know what you mean by  
18 upshot.

19 Q. Well, was it that there's a --  
20 because of our data on capture, there's a  
21 possibility of inducing ventricular fibrillation,  
22 if the barbs are located too close to the heart?

23 A. I don't know whether that specific  
24 thing was discussed at the first presentation or  
25 not.

1           Q.     Well, what was? You said here -- I  
2 mean, I'm basing it on what you said to  
3 Dr. Zipes.

4           A.     Uh-huh.

5           Q.     Which was, I advised Taser the  
6 possibility of inducing ventricular arrhythmia is  
7 there.

8           A.     At some point in time, when we  
9 discussed the results of the study, I had  
10 indicated that despite the fact that we did not  
11 induce ventricular fibrillation in any of the  
12 pigs, that because of our capture data, I would  
13 caution them that there is some possibility that  
14 this could induce ventricular arrhythmias in  
15 people.

16          Q.     And did you tell them that according  
17 to your data, the safety margin would increase,  
18 if the dart locations were further away from the  
19 chest or the heart?

20          A.     Oh, I think that was very clear from  
21 our data. So I don't recall specifically saying  
22 those words. But I very likely would have  
23 indicated that.

24          Q.     So you had this let's say kind of  
25 first meeting with Taser?

CERTIFICATE

State of Ohio ) SS:  
County of Cuyahoga.)

I, Janice M. Rogers, Notary Public  
within and for the State of Ohio, duly  
commissioned and qualified, do hereby certify  
that the within named witness was duly sworn to  
testify to the truth, the whole truth and nothing  
but the truth in the cause aforesaid; that the  
testimony then given by the witness was by me  
reduced to stenotypy in the presence of said  
witness; afterwards transcribed, and that the  
foregoing is a true and correct transcription of  
the testimony so given by the witness.

I do further certify that this  
deposition was taken at the time and place in the  
foregoing caption specified.

I do further certify that I am not a  
relative, counsel or attorney for either party,  
or otherwise interested in the event of this  
action.

I am not, nor is the court reporting  
firm with which I am affiliated, under a contract  
as defined in Civil Rule 28 (D).



1                   IN WITNESS WHEREOF, I have hereunto  
2   set my hand this       day of   , 2012.

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8                   \_\_\_\_\_  
9                   Janice M. Rogers, Notary Public  
10                  within and for the State of Ohio.

11  
12  
13                  My commission expires August 7, 2017.  
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